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IN RE PERSONAL APPEARANCE OF
EDWARD A. MCCONELL, SR. AT THE
DEPOSITION OF JAMES MARSON

) CASE NO. 3:20-mc-00025-SLG
)
)
) **MEMORANDUM IN SUPPORT OF**
) **MOTION BY EDWARD A.**
) **MCCONWELL, SR. TO ATTEND THE**
) **DEPOSITION OF JAMES MARSON**
) **IN PERSON**
)
)

Mr. Edward A. McConwell, Sr. ("Mr. McConwell"), attorney for Defendant Phillip T. Kapp in the above-captioned case, seeks expedited review of the Alaska U.S. Attorney's office's determination that he may not participate in person in an ongoing deposition in the above-captioned case. This is a criminal matter and the United States has noticed up the deposition of Mr. Marson to be taken in Anchorage, Alaska at the U.S. Attorney's Office to preserve his testimony for trial. This deposition started today and is scheduled to go for three days. Mr. McConwell has travelled to Alaska to perform his cross-examination of Mr. Marson which is expected to begin tomorrow. Mr. McConwell is being denied entry

into the U.S. Attorney's Office to attend the deposition even though he is in compliance with Alaska's COVID-19 travel standards and even though he has prepared, filed, and received approval for and executed a COVID-19 protocol in accordance with state mandates. For the reasons set forth below, the Court should Order Mr. McConwell be allowed to participate in person at the deposition.

II. FACTS

1. This is a criminal case that is scheduled for trial in Guam.
2. Mr. McConwell represents Mr. Phillip T. Kapp, one of the defendants in the criminal case.
3. The United States moved to depose James Marson in an effort to preserve the testimony of Mr. Marson at the criminal trial. Mr. Marson is an elderly gentleman who is terminally ill. On October 2, 2020, the court in Guam granted the government's motion based on its finding that "due to exceptional circumstances, it is in the interest of justice that the testimony of Mr. Marson be taken and preserved for possible use at trial. Order 7 ECF No. 794.
4. The Guam court also ordered the three day deposition take place beginning Monday, November 9, 2020 at 1:00 at the U.S. Attorney's Office in Anchorage Alaska. See Order 1-2, EFC No. 808.
5. On November 9, 2020, the United States filed a Notice of Defendant Kapp's Attorney's Noncompliance with the Court order at ECF 794 and Alaska's Health Mandate 10. See ECF 836. The notice refuses to allow Mr. McConwell to attend the deposition in person because the United State believes he is not in compliance with the Alaska's Health

Mandate 10. In its Notice, the United States suggested this matter be brought before the Chief District Court Judge.

6. The Defendants, including Mr. Kapp, all filed oppositions to the government's Notice. As support for their position that Mr. McConwell did meet Alaska's COVID Health mandates, Mr. McConwell prepared a Declaration In Response to United States' Notice of Defendant Kapp's Attorney's Noncompliance. This declaration is attached as Exhibit 1. A review of this declaration demonstrates that Mr. McConwell meets the requirements of Alaska's COVID-19 health mandates.

7. He took a COVID test on Thursday November 5, 2020. He travelled to Alaska on Saturday afternoon. The test was negative COVID-19 and within 72 hours of travelling to Alaska. He is 79 years old and a diabetic, so he is acutely aware of the dangers of contracting COVID-19. Since the test was administered, he has maintained social distancing practices. He is a private pilot, and he piloted his private plane from Kansas City to Palmer via Petersburg. He has maintained social distancing for the required five days in accordance with Alaska's COVID-19 travel standards.

8. Mr. McConwell has also submitted a community/Workforce Protective Plan in response to the Alaska's Health Mandates which has been accepted by the State of Alaska. See Exhibit 2.

9. The Guam court refused to interject itself in this dispute citing its lack of authority over what amounts to an Alaska matter. The court did invite Mr. McConwell to petition the U.S. District Court in Alaska to determine whether Mr. McConwell meets the

requirements under Alaska COVID 19 mandates. The Court's Order is attached as Exhibit

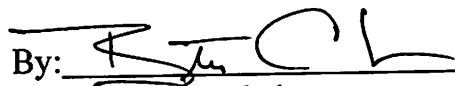
3.

III. CONCLUSION

Mr. McConwell has met or exceeded Alaska's COVID-19 health mandates. He seeks an expedited consideration of his underlying motion because otherwise the deposition will be over before a ruling under standard deadlines.

DATED this 9th day of November, 2020, at Anchorage, Alaska.

LAW OFFICE OF BRENT R. COLE, P.C.
Attorneys for Edward A. McConwell, Sr.

By: 
Brent R. Cole
AK State Bar No. 8606074

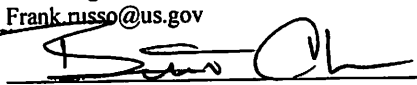
CERTIFICATE OF SERVICE

This is to certify that on this 9th day of November, 2020, a true and correct copy of the foregoing document was

- ☐ Mailed
- ☐ Hand-delivered
- ☐ Faxed
- ☒ Emailed

to the following:

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